

10/721,314

REMARKS

The Examiner rejected claims 1-9 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,092,929 to Dvorak in view of U.S. Patent No. 5,953,707 to Huang. In the Office Action, the Examiner asserted that Dvorak teaches all of the limitations of claim one, with the exception that Dvorak fails to disclose monitoring the customer inventory relative to a threshold value. The Examiner asserted that Huang discloses monitoring customer inventory by a vendor relative to a threshold value.

The present invention is directed toward methods used by outside vendors to monitor inventory and automatically transmit purchase orders when the inventory drops below a specified level. Dvorak et al. is directed toward methods for simulating and projecting future sales, inventory and gross margin. Abst. Counter to the present invention, the simulation and forecasting tools of Dvorak et al. are for internal use by retail sales companies that require merchandise management at varying levels of product hierarchy. Col. 1, Ln. 38-49; Col. 4, Ln. 53-56. Thus, the system of Dvorak et al. is not directed toward manufacturers, but instead is directed toward retailers. Accordingly, Dvorak et al. does not disclose requesting manufacturing materials, nor the manufacture of products associated with an order, as required by claim 1.

Huang et al. is provided by the Examiner to teach "monitoring customer inventory by a vendor relative to a threshold value, and if said customer inventory is below said threshold value, sending a request to said customer facility for the issuance of a customer purchase order for additional units of said product." While Huang et al. does generally disclose vendor managed replenishment, neither it nor Dvorak et al. discloses monitoring the plurality of types of inventory use including testing, deployment and installation as now included in claim 1.

The added language in claim 1 was originally presented in now cancelled claim 8. In rejecting claim 8 the Examiner took official notice that "monitoring customer inventory is performed in accordance with customer testing, deployment and

10/721,314

installation of units of said product after shipping said product to said customer facility" is commonly done today "as many companies keep track of inventories after they have actually utilized an item."

As a preliminary matter, this misstates the limitations of the claim. The monitoring is performed *by the vendor* and not by the customer, as the Examiner states. The comprehensive monitoring of a customers inventory by a vendor at various stages of use, including testing, deployment and installation is not shown in the cited references and allows a more accurate determination of inventory levels. Consequently, the limitations of claim 8 are not a fact "of such instant and unquestionable demonstration as to defy dispute." In re Ahlert, 424 F.2d 1088, 1091 (CCPA 1970). As the Examiner is aware, rejections based on official notice should be judiciously applied. MPEP 2144.03. The Applicant respectfully traverses the Examiner's use of official notice, and requests the Examiner provide documentary evidence in the next Office action according to 37 CFR 1.104(c)(2).

For at least the foregoing reasons, Applicant submits that independent claim 1, and thus the claims depending therefrom are patentable over Dvorak et al. and Huang et al. It is respectfully submitted that the present application is in condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 050877.

Respectfully submitted,
ABB Research Ltd.

By: 

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Dec 19, 2007

10/721,314

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